IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6178 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHABBIR SHAIKH AKBAR SHAIKH THRO' SHAIKH USMAN AKBAR SHAIK

Versus

COMMISSIONER OF POLICE

Appearance: MR NM KAPADIA for the Petitioner.
Mr.M.K.Patel, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/02/2003

ORAL JUDGEMENT

The petitioner has challenged his detention order dated 7.6.2002, by which he is detained under PASA as a `Bootlegger'. In the detention order, in paragraph 12, there is a reference of one criminal case, and as per the same, a criminal case is filed against the petitioner before the Randher Police Station, being Guna Register No.296 of 2002, for offences punishable under Sections 66(1)B, 65-E,A and 81 of the Bombay Prohibition Act and which is found to be under investigation. The petitioner

was arrested and, thereafter, released on bail subsequently. There is a reference in connection with the statement of two witnesses. It is argued by Mr.Kapadia for the petitioner that the said criminal case is registered against the petitioner on 1.4.2002. As against that, the detention order is passed on 7.6.2002. According to him, if, really, the activity of the petitioner was required to be prevented forthwith, there was no reason to wait for such a long time, as, normally, preventive detention order is required to be passed without any delay from the so-called incident. This aspect regarding delay in passing the order is not explained by the detaining authority.

Learned Advocate for the petitioner has relied on the decision of this Court in Special Civil Application No.78 of 2002, decided on 16.3.2000, wherein this Court has held as under :-

> " ... ...
>
> 6.1 So far as delay in passing of the order is concerned, there is no dispute about the fact that inspection was carried out on 11th August, 1999 and the order was passed on 13th December, 1999. Time gap between these two days is not explained by the detaining authority in the affidavit-in-reply. In paragraph 11 of this affidavit-in-reply, the detaining authority states as under :-
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> " I say that it is true that inspection of shop was carried on 11.8.1999 and order of detention is passed on 13.12.1999, but at the same time, live-link is not snapped and it cannot be said that stale incidents are considered for the purpose of passing of the order of detention.
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> Barring this, there is no other explanation coming from the detaining authority. If the grounds of detention are seen, the detaining authority has observed that the powers under Section 3(2) of the PBM Act are exercised in order to "immediately prevent the petitioner from continuing his black marketing activities". This subjective satisfaction would stand

> vitiated, if the detaining authority does not take immediate action. If the subjective satisfaction is genuine, action ought to have been taken by the detaining authority and, for that purpose, as per the statement made at the Bar by Mr.Thakkar, the last statement, during the inquiry, was recorded on 16th September, 1999. Thereafter, there is no further Inquiry / Investigation and the order is passed on material collected before that date and, therefore, there is at least a delay of about three months in passing the order. This cannot justify the genuineness of satisfaction of the detaining authority about the immediate need for exercise of powers under PBM Act for immediately preventing the petitioner from pursuing his activities. Under these circumstances, the petition deserves to be allowed.
>
> ... ..."

Considering that there is no explanation for delay in passing the detention order from the date of the incident in question, this petition is required to be allowed, as, the point is covered by the judgment of this Court, referred to above.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

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(apj)